

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-3482-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID F. BURBACH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
GEORGE S. CURRY, Judge. *Affirmed.*

EICH, C.J.¹ David Burbach appeals from a judgment fining him \$116.90 for driving sixty-eight miles per hour in a fifty-five-miles-per-hour speed zone.² He argues that the State failed to prove one of the elements necessary to

¹ This appeal is decided by a single judge pursuant to § 752.31(2)(c), STATS.

² This appeal is expedited under RULE 809.17, STATS.

establish the accuracy of the moving radar unit the arresting officer used to clock his speed. The trial court rejected the argument, as do we.

In *State v. Hanson*, 85 Wis.2d 233, 270 N.W.2d 212 (1978), the supreme court held that a presumption of accuracy sufficient to support a speeding conviction will be accorded to moving radar equipment if the arresting officer is able to testify to several listed factors relating to the device's reliability. The issue here centers on one of those factors: "That the input speed of the patrol car must be verified" *Id.* at 245, 270 N.W.2d at 218. Burbach asserts that the officer never adequately testified to this factor. The officer testified that, as he approached Burbach's car, he clocked Burbach's speed at sixty-nine miles per hour and locked it in at sixty-eight miles per hour. He was then asked:

Q. At the time you were monitoring [Burbach's] speed ... did you verify the ground speed of the squad car at that time?

A. Yes, I did.

Q. And what was the verified [speed?]

A. Fifty-five miles per hour.

In the most recent case the parties cite, *Washington County v. Luedtke*, 135 Wis.2d 131, 137, 399 N.W.2d 906, 908 (1987), the supreme court stated: "All that is required to verify or corroborate the radar-determined speed of the patrol car is a visual inspection, at the appropriate time, of the patrol car's own speedometer." Burbach complains that the officer did not specifically testify how he verified the squad car's speed—that he never stated that he had "compare[d] the speed of his ... car as shown on the ... car's speedometer with the ... car's speed as reported by the radar unit."

We agree with the State that perhaps more questions could have been asked of the officer, but, like the trial court, we do not believe this is fatal to Burbach's conviction. The officer was trained in the use and calibration of the radar unit, using it "[v]irtually every working day." He described the manner in which he calibrated the machine and was questioned on the other *Hanson* criteria. He was familiar with those criteria, and he testified that he had indeed verified his vehicle's speed. In the absence of any evidence suggesting that his verification was either inaccurate or subject to question,³ we agree with the trial court that, "[e]ven though the evidence is not specific or in its best form, it is nevertheless sufficient." To require more, we think, would exalt form over substance—particularly on the facts of this case.⁴

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. See RULE 809.23(1)(b)4, STATS.

³ We realize that Burbach took the position that it was "impossible" that he was speeding because he had set the cruise control on his 1992 Ford Escort automobile at fifty-five miles per hour. The weight of that testimony is, however, for the trial court, not this court, to determine. *Leciejewski v. Sedlak*, 116 Wis.2d 629, 637, 342 N.W.2d 734, 738 (1984).

⁴ We note in this regard that, in formulating the verification criterion, the *Hanson* court emphasized that it was "especially important where there is a reasonable dispute that road conditions may have distorted the accuracy of the reading (*i.e.*, presence of large trucks, congested traffic and the roadside being heavily covered with trees and signs)." *State v. Hanson*, 85 Wis.2d 233, 245, 270 N.W.2d 212, 218 (1978). None of those factors are present in this case.

